IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7450 of 1989

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

TALJABHAI J RABARI

Versus

BABUBHAI M TAILOR HEIR OF KAMLABEN WD/O M G TAILOR

---

Appearance:

MR MENGDE for Mr. SN SHELAT for Petitioner

NOTICE SERVED for Respondent No. 1

MR PREMAL JOSHI AGP for Respondent No. 2 & 3

---

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 25/08/2000

ORAL JUDGEMENT

Leave to add page 10-A.

Heard the learned advocate Mr. Mengde for the

petitioner and Mr. Premal Joshi, AGP for respondents nos. 2 & 3.

The petitioner, an agriculturist challenges order dated 25th July, 1984 made by the Assistant Collector directing cancellation of mutation entry no. 720 made on 31st January, 1980. The said order has been confirmed in revision by the Collector on 9th October, 1987 and has been further confirmed by the State Government in Revision Application on 7th July, 1989. Feeling aggrieved, the petitioner has preferred the present petition.

The facts leading to the present petition are :-

The petitioner, a resident of Mehsana District had purchased the land bearing Survey No. 180/1, admeasuring 2 acres and 35 gunthas situated in village Godadra of Taluka Chaurasi, District Surat on 28th December, 1979 from one Manilal Gopaldas Tailor, the ancestor of respondent no. 1 herein. Pursuant to the sale deed, the petitioner's name was entered into the revenue records and a mutation entry no. 720 was effected on 31st January, 1980. The said entry was certified on 3rd March, 1980. Since the petitioner cannot be said to be cultivating the land personally within the meaning of Section 2 (6) of the Bombay Tenancy & Agricultural Lands Act, 1948 [hereinafter referred to as, `the Act'], the sale of the land to the petitioner was in contravention of Section 63 of the Act. The Assistant Collector, somewhere in the year 1984, issued a notice upon the petitioner under Section 84 (c) of the Act and after affording due opportunity of hearing to the petitioner ordered to cancel the revenue entry no. 720, referred to hereinabove.

It is submitted that even prior to the purchase of the land, the petitioner was in possession of the land for over a period of 10 years and had been cultivating the said land as an agricultural labourer; that after the purchase of the land, the petitioner had expended a considerable amount for development of the land and that the suo motu notice issue under Section 84 (c) of the Act is grossly belated. The fact that the petitioner was cultivating the land as an agricultural labourer prior to its purchase in the year 1979 has not been established by the petitioner. On the contrary, the petitioner had, before the authority below, averred that the land was lying fallow and the petitioner had developed the said land and had made it cultivable. It, therefore, cannot be believed that even prior to the purchase of the land,

the petitioner was residing in the same village and was working as an agricultural labourer. As regards the development of the land, no evidence has been brought on the records of the matter indicating any expenditure incurred by the petitioner for the development of the land. It is, therefore, not possible to hold that after the purchase of the land, the petition did expend any money for development of the land. The petitioner has not even produced any evidence to show that even after its purchase, the petitioner cultivated the land or developed it in any manner. Mr. Mengde has strenuously urged that action initiated some four years after the date of the entry and the certification thereof is grossly belated and cannot be sustained. In support of this contention, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim, [1997 (6) SCC 71] and of this Court in the matter of Bhanabhai Morarbhai Solanki v. State of Gujarat, [1994 (1) GLR 822]. It cannot be gainsaid that no period of limitation has been provided for initiating action under Section 84 (c) of the Act nor can there be any dispute that in absence of the statutory period of limitation, an administrative action has to be taken within reasonable time. What should be the reasonable time should depend upon the facts of the given case. Generally, a period of three to four years is not considered to be a reasonable time particularly when the purchaser has spent some money for development of the land. As observed hereinabove, in the present case, the petitioner has not established that he was an agricultural labourer, as averred in the petition. On the contrary, it was his specific case that before the purchase of the land by him, the land was lying fallow. Further, he has not established that he had spent any money for development of the land. The petitioner has not even produced revenue records to show that even after the purchase of the land, he had cultivated the land and had not permitted the land to lie fallow.

Sub-section 6 of Section 2 of the Act [prior to its amendment in 1995 by Act No. 4 of 1995] defined the words, `to cultivate personally' as under :-

2 (6) `to cultivate personally' means to cultivate land on one's own account -

(i) by one's own labour, or

(ii) by the labour of any member of one's family, or

(iii) under the personal supervision of oneself or any member of one's family, by hired labour or by servants on wages payable in cash or kind but not in crop share,

being land, the entire area of which -

(a) is situate within the limits of a single village, or

(b) is so situated that no piece of land is separated from another by a distance of more than five miles, or

(c) forms one compact block.

Considering the meaning given to the land under above referred clause (b), it is but necessary that a person who claims to be cultivating the land personally, no piece of such land is separated from another by a distance of more than five miles. Indisputably, on the date of purchase, the petitioner was not cultivating any piece of land within five miles [8 kilometers] of the land in question. Besides, the petitioner has also failed to show that he had cultivated any land even in Mehsana, as averred.

In view of the above discussion, the impugned orders do not warrant interference under Art. 227 of the Constitution of India. Petition is dismissed. Rule is discharged. Interim relief is vacated. The parties shall bear their own costs.

***

Prakash*